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12 CFR Ch. III (1–1–09 Edition)

(1) The nonrefundable fee will be collected in six equal monthly installments.

(2) An entity electing the nonrefundable fee option will also be billed as it issues guaranteed debt under the debt guarantee program, and the amounts paid as a nonrefundable fee under this paragraph will be applied to offset these bills until the nonrefundable fee is exhausted.

(3) Thereafter, the institution will have to pay additional assessments on guaranteed debt as it issues the debt, as otherwise required by this section.

(g) *Collection of assessments—ACH Debit.* (1) Each participating entity shall take all actions necessary to allow the Corporation to debit assessments from the participating entity's designated deposit account as provided for in § 327.3(a)(2). The assessment payments of a participating entity that is not an insured depository institution shall be debited from the designated account of the affiliated insured depository institution it selected for FDICconnect access under § 370.5(g).

(2) Each participating entity shall ensure that funds in an amount at least equal to the amount of the assessment are available in the designated account for direct debit by the Corporation on the first business day after posting of the invoice on FDICconnect. A participating entity that is not an insured depository institution shall provide the necessary funds for payment of its assessments.

(3) Failure to take all necessary action or to provide funding to allow the Corporation to debit assessments shall be deemed to constitute nonpayment of the assessment, and such failure by any participating entity will be subject to the penalties for failure to timely pay assessments as provided for at § 308.132(c)(3)(v).

§ 370.7 Assessment for the Transaction Account Guarantee Program.

(a) *Waiver of assessment for certain initial periods.* No eligible entity shall pay any assessment associated with the transaction account guarantee program for the period from October 14, 2008, through November 12, 2008. An eligible entity that opts out of the program on or before December 5, 2008 will

not pay any assessment under the program.

(b) *Initiation of assessments.* Beginning on November 13, 2008 each eligible entity that does not opt out of the transaction account guarantee program on or before December 5, 2008 will be required to pay the FDIC assessments on all deposit amounts in noninterest-bearing transaction accounts calculated in accordance with paragraph (c) of this section

(c) *Amount of assessment.* Any eligible entity that does not opt out of the transaction account guarantee program shall pay quarterly an annualized 10 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of \$250,000, as reported on its quarterly Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest bearing transaction account into a noninterest bearing savings deposit account as provided in § 370.4(c). This assessment shall be in addition to an institution's risk-based assessment imposed under Part 327.

(d) *Collection of assessment.* Assessments for the transaction account guarantee program shall be collected along with a participating entity's quarterly deposit insurance payment as provided in § 327.3, and subject to penalties for failure to timely pay assessments as referenced in § 308.132(c)(3)(v).

§ 370.8 Systemic risk emergency special assessment to recover loss.

To the extent that the assessments provided under § 370.6 or § 370.7 are insufficient to cover any loss or expenses arising from the temporary liquidity guarantee program, the Corporation shall impose an emergency special assessment on insured depository institutions as provided under 12 U.S.C. 1823(c)(4)(G)(ii) of the FDI Act.

§ 370.9 Recordkeeping requirements.

The FDIC will establish procedures, require reports, and require participating entities to provide and preserve

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any information needed for the operation of this program.

§ 370.10 Oversight.

(a) Participating entities are subject to the FDIC's oversight regarding compliance with the terms of the temporary liquidity guarantee program.

(b) A participating entity's default in the payment of any debt may be considered an unsafe or unsound practice and may result in enforcement action as described in § 370.11.

(c) In general, with respect to a participating entity that is an insured depository institution, the FDIC shall consider the existence of conditions which rise to an obligation to pay on its guarantee as providing grounds for the appointment of the FDIC as conservator or receiver under Section 11(c)(5)(C) and (F) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(c)(5)(C) and (F).

(d) By issuing guaranteed debt, all participating entities agree, for the duration of the temporary liquidity guarantee program, to be subject to the FDIC's authority to determine compliance with the provisions and requirements of the program.

§ 370.11 Enforcement mechanisms.

(a) *Termination of Participation.* If the FDIC, in its discretion, after consultation with the participating entity's appropriate Federal banking agency, determines that the participating entity should no longer be permitted to continue to participate in the temporary liquidity guarantee program, the FDIC will inform the entity that it will no longer be provided the protections of the temporary liquidity guarantee program.

(1) Termination of participation in the temporary liquidity guarantee program will solely have prospective effect. All previously issued guaranteed debt will continue to be guaranteed as set forth in this part.

(2) The FDIC will work with the participating entity and its appropriate Federal banking agency to assure that the entity notifies its counterparties or creditors that subsequent debt issuances are not covered by the temporary liquidity guarantee program.

(b) *Enforcement Actions.* Violating any provision of the temporary liquidity guarantee program constitutes a violation of a regulation and may subject the participating entity and its institution-affiliated parties to enforcement actions under Section 8 of the FDI Act (12 U.S.C. 1818), including, for example, assessment of civil money penalties under section 8(i) of the FDI Act (12 U.S.C. 1818(i)), removal and prohibition orders under section 8(e) of the FDI Act (12 U.S.C. 1818(e)), and cease and desist orders under section 8(b) of the FDI Act (12 U.S.C. 1818(b)). The violation of any provision of the program by an insured depository institution also constitutes grounds for terminating the institution's deposit insurance under section 8(a)(2) of the FDI Act (12 U.S.C. 1818(a)(2)). The appropriate Federal banking agency for the participating entity will consult with the FDIC in enforcing the provisions of this part. The appropriate Federal banking agency and the FDIC also have enforcement authority under section 18(a)(4)(C) of the FDI Act (12 U.S.C. 1828(a)(4)(C)) to pursue an enforcement action if a person knowingly misrepresents that any deposit liability, obligation, certificate, or share is insured when it is not in fact insured.

§ 370.12 Payment on the guarantee.

(a) *Claims for Deposits in Noninterest-bearing Transaction Accounts.* (1) *In general.* The FDIC will pay the guaranteed claims of depositors for funds in a non-interest-bearing transaction account in an insured depository institution that is a participating entity as soon as possible upon the failure of the entity. Unless otherwise provided for in this paragraph (a), the guaranteed claims of depositors who hold noninterest-bearing transaction deposit accounts in such entities will be paid in accordance with 12 U.S.C. 1821(f) and 12 CFR parts 330 and 370.

(2) *Subrogation rights of FDIC.* Upon payment of such claims, the FDIC will be subrogated to the claims of depositors in accordance with 12 U.S.C. 1821(g).

(3) *Review of final determination.* The final determination of the amount guaranteed shall be considered a final agency action of the FDIC reviewable